

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

WESTPORT INSURANCE
CORPORATION,

Plaintiff,

v.

RICHARD C. HEIDLAGE, KOTIN,
CRABTREE AND STRONG, LLP, AND
NORTH AMERICAN UNDERWRITING
MANAGERS, INC.

Defendants.

CIVIL ACTION NO.
1:05-cv-11780 DPW

STIPULATION

WHEREAS, on September 19, 2007, Plaintiff Westport Insurance Corporation (“Westport”) filed a Renewed Motion for Summary Judgment (“Motion”) in this action for a determination that it has no duty to defend or indemnify Richard C. Heidlage ("Heidlage") in an action pending in Florida entitled *Charles N. Zalis, et al. v. Prince, Lobel, Glovsky & Tye, LLP, et al.* (“Underlying Lawsuit”). Westport’s Motion is based on the Limitation of Individual Prior Acts Endorsement, which precludes coverage for “any Claim based upon, arising out of, attributable to, or directly or indirectly resulting from any act, error, [or] omission . . . committed by” Heidlage prior to a Retroactive Date of May 1, 2002.

WHEREAS, in an April 4, 2007 response to a request for admission in the Underlying Lawsuit, the plaintiffs in the Underlying Lawsuit admitted that “. . . all acts of alleged professional negligence that . . . [plaintiffs] claim Heidlage committed occurred before May 1, 2002. ”

WHEREAS, in his deposition taken on June 1, 2007, the expert witness of the plaintiffs in the Underlying Lawsuit testified, among other things, that in his opinion, the last acts of malpractice committed by Heidlage occurred about March 2002, and that as of May 1, 2002, there was no further malpractice on the part of Heidlage.

WHEREAS, on October 3, 2007, Heidlage's defense counsel, Joseph Lowe, sent an e-mail to the attorneys for the plaintiffs in the Underlying Lawsuit, which was never responded to, requesting the following stipulation:

Plaintiffs, CHARLES N. ZALIS, individually, CHARLES N. ZALIS, in his capacity as General Partner of the CHARLES N. ZALIS FAMILY LIMITED PARTNERSHIP, a Virginia limited partnership, and NORTH AMERICAN UNDERWRITING MANAGERS, INC., a Florida corporation, hereby stipulate that any claims asserted against Defendants RICHARD C. HEIDLAGE and/or THE PRINCE LOBEL LAW FIRM in the instant action are as a result of acts, errors or omissions alleged to have been committed by said Defendants prior to May 1, 2002.

WHEREAS, during the status conference in this case on August 9, 2007, the Court advised counsel for the parties that based on the discovery and admission referred to above, he would likely conclude that Westport no longer had a duty to defend Heidlage in the Underlying Lawsuit;

WHEREAS, Heidlage and Westport wish to enter into this stipulation to resolve this action without additional cost and expense to either party.

Therefore Heidlage and Westport agree and stipulate as follows:

1. Westport may terminate funding of the defense of Heidlage in the Underlying Lawsuit as of the date of the execution of this Stipulation by both parties.
2. Upon execution of this Stipulation by both parties, counsel will jointly request the Court to enter an order of dismissal order in the form attached hereto as Exhibit A.
3. This stipulation resolves all claims and counterclaims in this action with respect to Westport's duty to Defend Heidlage in the Underlying Lawsuit

4. This stipulation does not resolve any claims or counterclaims in this action with respect to Westport's duty to indemnify Heidlage in the event that the plaintiffs in the Underlying Lawsuit obtain a judgment against Heidlage based, in part, on any act, error or omission committed by Heidlage on or after May 1, 2002.

5. Heidlage will provide prompt notice of any intended settlement of plaintiffs' claims in the Underlying Lawsuit if there is a reasonable basis to believe that the settlement is based, in part, on any act, error or omission allegedly committed by Heidlage on or after May 1, 2002.

RICHARD C. HEIDLAGE
By his attorney,

/s/ Richard M. Bluestein

Richard M. Bluestein, BBO#046840
KROKIDAS & BLUESTEIN LLP
600 Atlantic Avenue
Boston, MA 02210
(617) 482-7211

WESTPORT INSURANCE CORPORATION

/s/ Steven J. Bolotin

Steven J. Bolotin, BBO#564085
MORRISON MAHONEY LLP
250 Summer Street
Boston, MA 02210
(617) 439-7500

Jeffrey A. Goldwater
Robert A. Chaney
George C. Manos
BOLLINGER, RUBERRY & GARVEY
500 W. Madison St.
Suite 2300
Chicago, IL 60661
(312) 466-8000

Dated: December 7, 2007

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing document was served upon counsel of record for each party hereto by the Court's electronic filing system on this 7th day of December, 2007.

/s/ Richard M. Bluestein

Richard M. Bluestein

Exhibit A

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

WESTPORT INSURANCE
CORPORATION,

Plaintiff,

v.

RICHARD C. HEIDLAGE, KOTIN,
CRABTREE AND STRONG, LLP, AND
NORTH AMERICAN UNDERWRITING
MANAGERS, INC.

Defendants.

CIVIL ACTION NO.
1:05-cv-11780 DPW

ORDER OF DISMISSAL

In accordance with and governed by the stipulation of the parties dated December 7, 2007, all claims of Plaintiff Westport Insurance Corporation and all counterclaims of defendant Richard C. Heidlage are hereby DISMISSED.

Entered December ____, 2007

Douglas P. Woodlock
United States District Judge